



GEORGIA M. PESTANA
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

JEFFREY F. FRANK
Assistant Corporation Counsel
Email: jefrank@law.nyc.gov
Cell: (929) 930-0780
Tel: (212) 356-3541

November 24, 2021

VIA ECF

Honorable Robert M. Levy
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Justin Cohen and Kyala Schenck v. City of New York, et al.,
21-CV-4821 (AMD) (RML)

Your Honor:

I am an Assistant Corporation Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York, representing defendants City of New York (the "City"), NYC Mayor Bill de Blasio, NYPD Commissioner Dermot Shea, NYPD Chief of Department Terence Monahan, and Police Officer Adnan Hussain in the above-referenced matter. I write to respectfully request: (1) an enlargement of the time for defendants City, Mayor de Blasio, Commissioner Shea, Chief Monahan, and PO Hussain to answer or otherwise respond to the complaint, from November 30, 2021, until twenty-one (21) days after defendant PO Miguel Marquez is properly served; and (2) that the Court *sua sponte* enlarge the time for defendant PO Demery to answer or otherwise respond to the complaint by the same amount of time.

This is the City's second request for an extension of this deadline. The first request was made with plaintiffs' consent, (*see* Docket Entry No. 16), and the Court granted that request, (Order dated September 30, 2021). Plaintiffs' counsel does not consent to the instant request. In their communications with the undersigned, plaintiffs' counsel indicated that they would consent on the condition that defendants provide: (1) a date certain by which defendants must produce PO Marquez's service address; and (2) a date certain by which defendants must provide a status report regarding defendants' efforts to identify John Doe defendants. Defendants are not in a position to provide a date certain for either item. Thus, the instant request is made without plaintiffs' consent. The undersigned is making every effort to obtain PO Marquez's service address on an expedited basis and to identify any John Doe defendants.

According to the docket, PO Hussain was served on September 8, 2021, (*see* Docket Entry No. 13), and defendants City, Mayor de Blasio, Commissioner Shea, Chief Monahan, and PO Demery were served on September 9, 2021. (*See* Docket Entry Nos. 10–12, 14–15) Due to an internal oversight, PO Demery’s request for representation was not received by this Office until November 19, 2021. Because PO Demery remains unrepresented, this Office is not yet in a position to appear for that defendant.


PO Marquez is retired and has not yet been served. The undersigned has requested PO Marquez’s service address on an expedited basis and, upon receipt, will immediately provide the same to plaintiffs’ counsel. Because PO Marquez has not yet been served, this Office has not yet received a request to represent him and, therefore, is not yet in a position to appear for that defendant. Pursuant to New York General Municipal Law § 50-k, if this Office receives such a request, it must investigate and determine whether it may assume legal representation of PO Marquez before we may seek relief or respond to the complaint on his behalf. *See Mercurio v. City of New York*, 758 F.2d 862, 864–65 (2d Cir. 1985); *Williams v. City of New York*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (holding that the decision as to whether to represent individual defendants is made by the Corporation Counsel as set forth in state law).

The requested extension will allow all defendants to file a single, responsive pleading, which would promote judicial efficiency and would avoid the potential for jeopardizing the defenses of PO Demery and PO Marquez, both of whom remain unrepresented.

Accordingly, defendants City, Mayor de Blasio, Commissioner Shea, Chief Monahan, and PO Hussain respectfully request that the Court enlarge their time — and *sua sponte* enlarge the time of PO Demery — to answer or otherwise respond to the Complaint, from November 30, 2021, until 21 days after PO Marquez is properly served.

We thank the Court for its consideration of this matter.

Respectfully submitted,



Jeffrey F. Frank

Assistant Corporation Counsel

Special Federal Litigation Division

cc: All Counsel (via ECF)